

1115. Cooper

# DECISION



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-221739.2; B-221740.2; **DATE:** February 26, 1986  
B-221741.2

**MATTER OF:** IEM Orthopaedics, Incorporated--  
Request for Reconsideration

## DIGEST:

A purchase description or specification that serves the sole purpose of describing the items offerors are to supply in the event of award is a performance requirement, rather than a definitive responsibility criterion, since the description does not establish an objective standard related to an offeror's ability to perform the contract.

IEM Orthopaedics, Incorporated requests reconsideration of the dismissal of its protests against the award of three contracts to the Chattanooga Corporation under request for proposals (RFP) Nos. DLA120-85-R-2688, DLA120-85-R-2842, and DLA120-85-R-0125, issued by the Defense Logistics Agency (DLA). The solicitations called for Sorbothane insoles and heel pads for footwear.

We affirm our prior dismissal of the protests.

IEM originally alleged that the awardee lacked the ability to provide the item required by the RFPs. This contention constituted a protest against DLA's affirmative determination of Chattanooga's responsibility, which was necessarily involved in any decision to award to Chattanooga. See the Federal Acquisition Regulation, 48 C.F.R. § 9.103(a) (1984). We do not review affirmative determinations of responsibility unless there is a showing of possible fraud or bad faith on the part of the procuring officials or that the solicitation contains definitive responsibility criteria that allegedly have not been applied. Mann Rental Services, B-216868, Oct. 31, 1984, 84-2 CPD ¶ 493.

IEM, in its request for reconsideration, argues that the requirement for Sorbothane insoles and heel pads constitutes a definitive responsibility criterion that was not met by the awardee, so that our dismissal was erroneous.

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B-221739.2, et al.

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Purchase descriptions or specifications for the product of a particular manufacturer do not constitute definitive responsibility criteria. Such criteria consist of objective standards relevant to an offeror's ability to perform, for example, a requirement for a certain number of years of specific experience. When such criteria are included in a solicitation, an offeror must be found to comply as a precondition to receiving the award.

The purchase descriptions here do not establish a standard related to an offeror's ability to perform the contract; rather, they serve the sole purpose of describing the item of footwear to be supplied in the event of award. We have specifically held that such performance requirements are not definitive responsibility criteria. Victaulic Co. of America, B-217129, May 6, 1985, 85-1 CPD ¶ 500.

IEM's protests therefore do not fall within the exception under which we consider affirmative determinations of responsibility, and we affirm our dismissal.

*for Seymour Efron*  
Harry R. Van Cleve  
General Counsel